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# BEFORE THE POSTAL REGULATORY COMMISSION WASHINGTON, D.C. 20268–0001

REMOVING GLOBAL DIRECT CONTRACTS FROM THE COMPETITIVE PRODUCT LIST

DOCKET NO. MC2016-7

# TO REMOVE GLOBAL DIRECT CONTRACTS FROM THE COMPETITIVE PRODUCT LIST

(October 16, 2015)

In accordance with 39 U.S.C. § 3642 and 39 C.F.R. § 3020.30 *et seq.*, the United States Postal Service hereby requests that Postal Regulatory Commission (Commission) remove Global Direct Contracts from the competitive product list.

Pursuant to 39 C.F.R. § 3.4(f), the removal is authorized by Governors' Decision No. 11-6, a redacted copy of which is included as Attachment A to this Request. An Application for Nonpublic Treatment, with respect to Governors' Decision No. 11-6, is included as Attachment B. A Statement of Supporting Justification, which demonstrates that the Request fulfills the criteria set forth in 39 U.S.C. § 3642 for making changes to the competitive product list, is included as Attachment C. The proposed Mail Classification Schedule (MCS) language appears as Attachment D. As provided in 39 U.S.C. § 3642(d)(1), a notice describing the Request is being published in the Federal Register.

As discussed in the accompanying Statement of Supporting Justification, the Postal Service is requesting the removal of Global Direct Contracts from the competitive product list due to the absence of customer demand for this service. Therefore, in

making the decision to eliminate Global Direct Contracts, the Postal Service is attempting to align its service offerings with current customer needs and preferences.

The Postal Service therefore requests that Global Direct Contracts be removed from competitive product list. As described in the Statement of Supporting Justification, the proposed changes satisfy the criteria set forth in 39 C.F.R. § 3020.32.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

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DECISION OF THE GOVERNORS OF THE UNITED STATES POSTAL SERVICE ON THE ESTABLISHMENT OF PRICES AND CLASSIFICATIONS FOR DOMESTIC COMPETITIVE AGREEMENTS, OUTBOUND INTERNATIONAL COMPETITIVE AGREEMENTS, AND OTHER NON-PUBLISHED COMPETITIVE RATES (GOVERNORS' DECISION NO. 11-6)

March 22, 2011

#### STATEMENT OF EXPLANATION AND JUSTIFICATION

Pursuant to our authority under section 3632 of title 39, as amended by the Postal Accountability and Enhancement Act of 2006 ("PAEA"), we establish new prices not of general applicability for certain of the Postal Service's competitive service offerings, and such changes in classification as are necessary to implement the new prices.

This decision establishes prices for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates. Domestic Competitive Agreements consist of negotiated service agreements with Postal Service customers for domestic services that are categorized as competitive in accordance with 39 U.S.C. § 3642(b)(1)-(2). Outbound International Competitive Agreements consist of negotiated service agreements with Postal Service customers for outbound international services that are categorized as competitive in accordance with 39 U.S.C. § 3642(b)(1)-(2). Inbound International Competitive Agreements consist of negotiated service agreements with foreign postal operators or other entities for inbound international services that are categorized as competitive in accordance with 39 U.S.C. § 3642(b)(1)-(2). Other Non-Published Competitive Rates consist of rates not of general applicability that are not embodied in contractual instruments, but nonetheless arise from other sources, such as the Universal Postal Convention.

Governors' Decision No. 11-6

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With respect to any product within the above categories, management is hereby authorized to prepare any necessary product description, including text for inclusion in the Mail Classification Schedule, and to present such product description to the Postal Regulatory Commission.

The Postal Accountability and Enhancement Act (PAEA) requires that prices for competitive products must cover each product's attributable costs, not result in subsidization by market dominant products, and enable all competitive products to contribute an appropriate share to the Postal Service's institutional costs. For agreements subject to this Decision, there are hereby established all prices that will cover costs for the relevant product and that conform in all other respects to 39 U.S.C. §§ 3632-3633 and 39 C.F.R. §§ 3015.5 and 3015.7. As discussed in the accompanying management analysis, the Chief Financial Officer (or his delegee(s)) shall certify that all cost inputs have been correctly identified for prices subject to this Decision and that all prices subject to this Decision conform to this Decision and to the requirements of the PAEA.

No agreement, grouping of functionally equivalent agreements, or other classification authorized pursuant to this Decision may go into effect unless it is submitted to the Postal Regulatory Commission with a notice that complies with 39 U.S.C. § 3632(b)(3). On a quarterly basis, management shall furnish the Governors with a report on all non-published rate and classification initiatives. Not less than once each year, the Governors shall review the basis for this Decision and make such further determination as they may deem necessary. This Decision does not affect postal management's obligation to furnish to the Board of Governors information regarding any significant, new program, policy, major modification, or initiative, or any other matter under 39 C.F.R. § 3.7(d), including where such a matter also falls within the scope of this Decision.

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This Decision does not supersede or otherwise modify Governors' Decision Nos. 08-5, 08-6, 08-7, 08-8, 08-10, 08-20, 08-24, 09-5, 09-6, 09-7, 09-14, 09-15, 09-16, 10-1, 10-2, 10-3, 10-6, and 10-7, nor does it affect the validity of prices and classifications established under those Decisions. Management may also continue to present to the Postal Regulatory Commission for its review, as appropriate, rate and classification changes to succeed the minimum and maximum non-published rates in Decision Nos. 10-2 and 10-6.

**ORDER** 

In accordance with the foregoing Decision of the Governors, the prices set forth herein for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates and the changes in classification necessary to implement those prices, are hereby approved and ordered into effect. An agreement is authorized under this Decision only if the prices fall within this Decision and the certification process specified herein is followed. Prices and classification changes established pursuant to this Decision will take effect after filing with and completion of review by the Postal Regulatory Commission.

By The Governors:

Louis J. Giuliano

Chairman

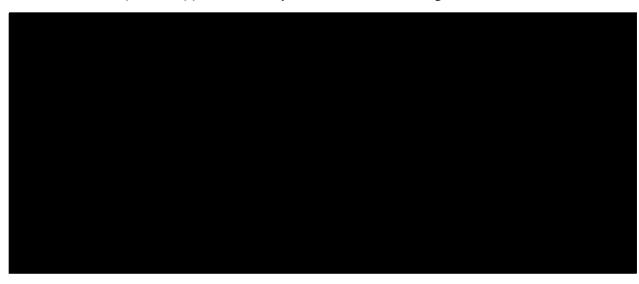
#### Attachment A

# Management Analysis of Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates

This analysis concerns the inbound competitive prices and classifications in the Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates (collectively, "competitive instruments"). Competitive instruments are often negotiated with customers and foreign postal operators for better cost coverage, higher overall contribution, and improved service with respect to postal services classified as competitive. They may also arise from other sources, such as the Universal Postal Convention.

The cost coverage for each competitive agreement or grouping of functionally equivalent instruments (collectively, each "product") will be
The cost coverage for a product equals

Each competitive instrument may have multiple price categories and negotiated components. Examples of such categories or components would be Priority Mail, Express Mail, Parcel Return Service, Priority Mail International, Express Mail International, International Priority Airmail, International Surface Air Lift, Inbound Air Parcel Post, Inbound Surface Parcel Post, Inbound Direct Entry, and Inbound International Expedited Services. These or other categories may include other services that the relevant customer or foreign postal operator offers to its customers under differing terms, but that nevertheless are processed and delivered in the same manner within the United States Postal Service's network. Such instruments may also establish negotiated rates for services ancillary to such items and for customized competitive services developed for application solely in the context of the agreement.





Prices established by these formulas should not interfere with competitive products' ability as a whole to comply with 39 U.S.C.§ 3633(a)(3), which, as implemented by (39 C.F.R.§ 3015.7(c)) requires competitive products to contribute a minimum of 5.5 percent to the Postal Service's total institutional costs. Accordingly, no issue of subsidization of competitive products by market dominant products should arise (39 U.S.C.§ 3633(a)(1)).

# CERTIFICATION OF GOVERNORS' VOTE IN THE GOVERNORS' DECISION NO. 11-6

Date: 3/22/20//

I hereby certify that the Governors voted on adopting Governors' Decision No. 11-6, and that, consistent with 39 USC 3632(a), a majority of the Governors then holding office concurred in the Decision.

Julie S. Moore

Secretary of the Board of Governors

# APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC TREATMENT OF MATERIALS

In accordance with 39 C.F.R. § 3007.21, the United States Postal Service (Postal Service) hereby applies for non-public treatment of Governors' Decision No .11-6 filed with the Commission in this docket.

The Postal Service hereby furnishes below the justification for this application required by 39 C.F.R. § 3007.21(c).

(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);

Information of a commercial nature, which under good business practice would not be publicly disclosed, as well as third party business information, is not required to be disclosed to the public. 39 U.S.C. § 410(c)(2); 5 U.S.C. § 552(b)(3) and (4). The Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A).¹ Because the portions of Governors' Decision No .11-6 filed non-publicly in this docket fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these portions of Governors' Decision No .11-6 are exempt from public disclosure and grant the Postal Service's application for their non-public treatment.

<sup>&</sup>lt;sup>1</sup> The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

(2) Identification, including name, phone number, and e-mail address for any third party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;

No third parties have an interest in the materials.

(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;

In connection with its Notice filed in this docket, the Postal Service included Governors' Decision No .11-6. Governors' Decision No .11-6 was filed under seal, with redacted copies filed publicly. The Postal Service maintains that the redacted portions of Governors' Decision No .11-6 should remain confidential as sensitive business information.

(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;

Governors' Decision No. 11-6 and its Attachment A include the Postal Service's desired cost coverage for negotiated service agreements, specific rate information and a detailed description of the methodology used to establish the rates, which are highly confidential in the business world. If this information were made public, the Postal Service's competitors would have the advantage of knowing the range of prices that may be offered by the Postal Service. Thus, competitors would be able to take advantage of the information to offer lower pricing, while subsidizing any losses with profits from other customers. Eventually, this could freeze the Postal Service out of the competitive package services market.

(5) At least one specific hypothetical, illustrative example of each alleged harm;

Identified harm: Public disclosure of established rates and the financial model and methodology used to generate the rates would be used by competitors and customers to the detriment of the Postal Service.

Hypothetical: A competing expedited package delivery service obtains a copy of the unredacted version of the Governors' Decision from the Postal Regulatory

Commission's website. The competing service reviews information in the Governors'

Decision and then sets its own rates for products similar to what the Postal Service.

The competing service markets its ability to guarantee to beat the Postal Service on price for delivery services. By sustaining this below-market strategy for a relatively short period of time, the competitor, or all of the Postal Service's competitors acting in a likewise fashion, would freeze the Postal Service out of the business-to-business and business-to-customer delivery services markets

# (6) The extent of protection from public disclosure deemed to be necessary;

The Postal Service maintains that the redacted portions of the Governors'

Decision filed non-publicly should be withheld from persons involved in competitive decision-making in the relevant market for delivery services, as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for this or similar products should not be provided access to the non-public materials.

# (7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof;

The Commission's regulations provide that non-public materials shall lose nonpublic status ten years after the date of filing with the Commission, unless the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30.

(8) Any other factors or reasons relevant to support the application.

# Conclusion

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified material.

# **Statement of Supporting Justification**

- I, Giselle E. Valera, Vice President and Managing Director, Global Business, sponsor the Postal Service's Request that the Postal Regulatory Commission remove Global Direct Contracts from the competitive product list as outlined in the proposed Mail Classification Schedule (MCS) language. This Statement supports the Request by providing the information required by each applicable subsection of 39 C.F.R. § 3020.32, as indicated below. I attest to the accuracy of the information contained herein.
- (a) Demonstrate why the change is in accordance with the policies and the applicable criteria of chapter 36 of title 39 of the United States Code.

As demonstrated below in subsections (b) through (i), the change complies with the applicable statutory provisions.

- (b) Explain why, as to market dominant products, the change is not inconsistent with each requirement of 39 U.S.C. 3622(d), and that it advances the objectives of 39 U.S.C. 3622(b), taking into account the factors of 39 U.S.C. 3622(c).
  Not Applicable.
- (c) Explain why, as to competitive products, the addition, deletion, or transfer will not result in the violation of any of the standards of 39 U.S.C. 3633.

Section 3633 sets forth three standards for competitive products. Subsection (a)(1) prohibits the subsidization of competitive products by market-dominant products. Subsection (a)(2) requires that each competitive product cover its attributable costs. And subsection (a)(3) requires that all competitive products collectively cover an appropriate share of Postal Service institutional costs.

Because the Postal Service is requesting the removal of a product from the competitive product list, the product's ability to cover its own costs does not inform the instant request. Additionally, removal of the product from the competitive product list should not lead to subsidization of this competitive product by market dominant products as the product will cease to exist.

- (d) Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can, without risk of losing a significant level of business to other firms offering similar products: (1) set the price of such product substantially above costs; (2) raise prices significantly; (3) decrease quality; or (4) decrease output.
  - Not applicable.
- (e) Explain whether or not each product that is the subject of the request is covered by the postal monopoly as reserved to the Postal Service under 18 U.S.C. 1696 subject to the exceptions set forth in 39 U.S.C. 601.

The Global Direct Contracts product is outside the scope of letter monopoly under existing regulations as the letter monopoly was suspended in 1986 with respect to "the uninterrupted carriage of letters from a point within the United States to a foreign country for deposit in its domestic or international mails for delivery to an ultimate destination outside the United States." 39 C.F.R. § 320.8.

- (f) Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product.
  - Not applicable.

- (g) Provide any information available on the views of those who use the product on the appropriateness of the proposed modification.
- While the Postal Service has no specific views from customers about the removal of Global Direct from the competitive products list, the fact that customers are not availing themselves of this option suggests that market interest among customers is low to non-existent. (h) Provide a description of the likely impact of the proposed modification on small business concerns.

There will be no impact on small business concerns as no Global Direct Contracts have been signed since 2012 and none have been effective since January 2013.

(i) Include such information and data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification.

None.

# **CHANGES TO THE** MAIL CLASSIFICATION SCHEDULE (MCS) (Additions are underlined and deletions are marked with strike-through)

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# PART B

# **COMPETITIVE PRODUCTS**

2000	COMPETITIVE PRODUCT LIST
2001	COMPETITIVE PRODUCT DESCRIPTIONS
* * * * *	
2500	NEGOTIATED SERVICE AGREEMENTS
* * * * *	
2510	Outbound International
2510.1	Description
	The Postal Service enters into contracts, on a mailer-specific basis, to provide outbound services and respective prices that are available only to mailers meeting defined eligibility requirements.
2510.2	Negotiated Service Agreement Groups
	Global Expedited Package Services (GEPS) Contracts (2510.3)
	Global Direct Contracts (2510.4)

- Global Bulk Economy (GBE) Contracts (2510.5)
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- Priority Mail International Regional Rate Boxes—Non-Published Rates (2510.9)
- Outbound Competitive International Merchandise Return Service Agreement with Royal Mail Group, Ltd. (2510.10)

 Priority Mail International Regional Rate Boxes (PMI RRB) Contracts (2510.11)

\* \* \* \* \*

#### 2510.4 Global Direct Contracts

### 2510.4.1 Description

- a. Global Direct Contracts provide for mail accepted within the United States and transportation to a receiving country of mail pieces bearing the image of appropriate foreign post indicia. The Postal Service pays the appropriate settlement charges for this mail.
- b. The preparation requirements are the preparation requirements for the given product set by the receiving country.
- c. All items must bear the postal imprint of the receiving country and a return address in the receiving country.
- d. A mailer must be capable, on an annualized basis, of either tendering at least 5,000 pieces of international mail to the Postal Service or paying at least \$100,000.00 in international postage to the Postal Service.
- e. The contract must cover its attributable costs.
- f. Global Direct mail (except M-Bags) is sealed against inspection and shall not be opened except as authorized by law.

#### 2510.4.2 Size and Weight Limitations

Size and weight requirements are the requirements for the given product set by the receiving country.

## 2510.4.3 Minimum Volume or Revenue Requirements

Mailers must commit to tender varying minimum volumes or postage on an annualized basis. The mailer may be required to meet minimum volume or weight requirements as specified by the Postal Service.

### 2510.4.4 Price Categories

The following price categories are available for the product specified in this section:

 Prices are dependent upon a volume or postage commitment on the part of the customer and basically cover mail acceptance within the United States, transportation from the United States to the receiving country and the appropriate postage in the receiving country.

## 2510.4.5 Optional Features

The following additional postal services may be available in conjunction with the product specified in this section:

 All optional features applicable to the product as set by the receiving country.

## 2510.4.6 Products Included in Group (Agreements)

Each product is followed by a list of agreements included within that product.

Global Direct Contracts 1
 Baseline Reference
 Docket Nos. MC2010-17 and CP2010-18
 PRC Order No. 386, January 11, 2010

 Included Agreements